

REMARKS

The Office Action rejected claims 1, 2, 7, 11-17, 19-21, 23, and 81-105. Claims 87 and 89-104 were rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Karaoke Revolution (<http://www.gamespot.com/xbox/puzzle/karaokerevolution/news.html?sid=6105361&mode=recent>) and combinations of Karaoke Revolution FAQs (<http://www.gamefaqs.com/console/ps2/file/914933/28658>), XBOX Live Launch Center (<http://www.gamespot.com/gamespot/features/all/xboxlive/index-vg.html>), Kumar et al. (US 6,514,083 B1), and one of ordinary skill.

With entry of this Amendment and Response, claims 1-86, 88-89 and 105 are cancelled, and claims 87 and 90-92 are amended. Support for the amendments to claims 87 and 90-92 can be found throughout the specification, for example, paras. [0055] and [0056]. Applicant submits that these amendments do not introduce any new matter. After entry of this Amendment and Response, claims 87 and 90-104 will be pending and under consideration.

Rejection of independent claim 87 under 35 U.S.C. §103(a)

The Office Action rejected claim 87 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Karaoke Revolution in combination with Karaoke Revolution FAQs and XBOX Live Launch Center. As stated in MPEP § 2143.01, obviousness can be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so. Applicant respectfully submits that the combination of cited references does not teach or suggest all of the elements of Applicant's amended claim 87, namely, the combination does not teach having the portion of a video game and the quantum of music content embodied as *separate downloadable units* which are then offered for sale online as a *single purchase unit*. Furthermore, Applicant respectfully submits that the combination does not teach making the music content available in a format such that playback can be achieved *independent of the game platform*.

The Office Action states that the combination of Karaoke Revolution and XBOX Live Launch Center teaches "portions of the game like new songs are stored on a server

and offered to players through an online store.” (Office Action, p. 5). The Office Action also states that Karaoke Revolution FAQs teaches the game’s training mode “offers a form of music play back that is not a game” because the player is “not scored or rated” and can thereby “concentrate on learning the songs by having the game fully play back the song.” (Office Action, p. 6). From these, the Office Action concludes that these references in combination teach the offering of video game content and music content via an online store and subsequent playback of that music content outside the context of the video game, thereby rendering claim 87 obvious. (Office Action, p. 8-9). Applicant respectfully submits that in light of the proposed amendments, the references alone or in combination do not teach or suggest all of the claimed limitations.

Applicant’s amended claim 87 partially recites, “(a) creating a portion of a video game based on a quantum of music content, the portion of a video game and the quantum of music content embodied as separate downloadable units...” and “(c) offering for sale, via an online store, as a single purchase unit the portion of the video game and the quantum of music content, the quantum of music content in a format such that playback can be achieved independent of the video game platform...”. The cited references, alone or in combination, do not teach or suggest having the portion of a video game and the quantum of music content embodied as *separate downloadable units* which are then offered for sale online as a *single purchase unit*. Instead, the Karaoke Revolution reference discloses the downloadable content from XBOX Live as a single “song” or “song pack” – meaning the entire download of both video game content and music content is a singular file and not separate units as claimed in amended claim 87.

Furthermore, the cited references, alone or in combination, do not teach or suggest making the music content available in a format such that playback can be achieved *independent of the game platform*. The Office Action cites Karaoke Revolution FAQs to suggest the training mode of Karaoke Revolution provides a means for music play back “outside the context of the game” because the training mode does not require players to be scored or rated and, according to the Office Action, “the game offers a form of music play back that is not a game.” (Office Action, p. 8-9). However, this does not teach or suggest a music content format such that playback can be achieved *independent of the*

game platform within the meaning of amended claim 87. A “format such that playback can be achieved independent of the game platform” requires that the music content can be played in a context or using a device that is wholly independent of the video game, e.g., outside of any play or training mode, such as an mp3 file playable on a portable music device (e.g., iPod). Neither the Karaoke Revolution reference nor the XBOX Live Launch Center reference make any mention of downloading music content in a format that allows for playback outside the context of the game software or by using the game platform. Instead, those references suggest downloadable music content (i.e., “songs” or “song packs”) that relies on being activated within the context of the video game software executing on the game platform – whether it occurs within the actual game play mode, a training mode, or some other mode – in order to hear it played. As a result, Applicant respectfully submits that the combination of Karaoke Revolution, Karaoke Revolution FAQs, and XBOX Live Launch Center fails to teach or suggest all of the elements of Applicant’s amended claim 87.

Rejection of dependent claims 90-104

The Office Action rejected claims 90-104, all of which depend from claim 87, over various combinations of Final Fantasy Anthology: Collector’s Edition, www.samgoody.com, Karaoke Revolution, Dance Dance Revolution, XBOX Live Launch Center, Amplitude, and Kumar. None of these cited references contain any mention of the video game and the music content embodied as separate downloadable units offered as a single purchase unit where the music content is in a format such that playback is achieved independent of the game platform.

Thus, Applicant respectfully submits none of the cited references teach or suggest “(a) creating a portion of a video game based on a quantum of music content, the portion of a video game and the quantum of music content embodied as separate downloadable units...” and “(c) offering for sale, via an online store, as a single purchase unit, the portion of the video game and the quantum of music content, the quantum of music content in a format such that playback can be achieved independent of the game platform” as required by claims 90-104.

CONCLUSION

Applicant's discussion of particular positions in the Office Action does not constitute a concession with respect to any positions that are not expressly contested by the Applicant. Applicant's emphasis of particular reasons why the claims are patentable does not imply that there are not other sufficient reasons why the claims are patentable.

In view of the foregoing remarks and the inability of the prior art, alone or in combination, to anticipate, suggest or make obvious the subject matter as a whole of the invention disclosed and claimed in this application, claims 87 and 90-104 are submitted to be in condition for allowance, and notice thereof is respectfully requested. If the Examiner feels that a telephone conference would expedite prosecution of this case, the Examiner is invited to call the undersigned.

Date: March 25, 2009

Reg. No.: 63,910

Tel. No.: (617) 526-9826

Fax No.: (617) 526-9899

Respectfully submitted,

/Patrick J Myers #63910/

Patrick J. Myers
Attorney for the Applicant
Proskauer Rose LLP
One International Place
Boston, MA 02110